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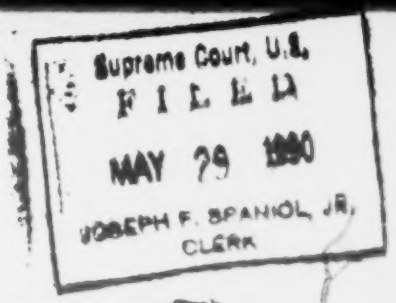

NO.

IN THE
SUPREME COURT OF THE UNITED STATES

JACQUELYN F. JONES,
Petitioner

versus

TURNER BROADCASTING SYSTEM, INC.,
Respondents

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT
OF THE STATE OF GEORGIA

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QUESTION PRESENTED FOR REVIEW

WHETHER OR NOT THE GEORGIA COURT OF LAST RESORT ERRED AS A MATTER OF FEDERAL LAW IN GRANTING SUMMARY JUDGMENT BASED ON COURTS' ILLEGAL MISQUOTES FROM DEPOSITION WHICH COULD NOT HAVE BEEN CONSIDERED BECAUSE DEPOSITION WAS NOT EVEN IN THE RECORD; WHETHER A MINORITY SENIOR CITIZEN SHOULD BE DEPRIVED OF PROTECTION AGAINST UNAUTHORIZED USE OF PLAINTIFF CREATOR-AUTHOR'S PROPERTY BY A NATIONAL BROADCAST CONGLOMERATE, THOUGH FACTUAL EVIDENCE EXISTS, RESULTING IN LACK OF PROTECTION FOR ALL CREATOR-AUTHORS' BROADCAST PROGRAM PROPERTY AND HARM TO THE PUBLIC THROUGH UNBALANCED NEGATIVE PROGRAMMING?

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IN THE
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NO.

JACQUELYN F. JONES

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TURNER BROADCASTING
SYSTEM, INC.,

Respondents

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Jacquelyn F. Jones, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Georgia.

OPINIONS BELOW

The Judgment Order of the Supreme Court of the State of Georgia, February 28, 1990 is unrecorded and appears at page 43 of the Appendix herein.

Order and Opinion of the Court of Appeals, State of Georgia, dated November 20, 1989, and appears at page 45 of the Appendix herein.

The Order of the Superior Court of Fulton County, State of Georgia, granting Summary Judgment, entered September 20, 1988, and appears at page 53 of the Appendix herein.

JURISDICTION

The final judgment of the Supreme Court of the State of Georgia is dated February 28, 1990. This Petition for a Writ of Certiorari is filed timely within ninety (90) days thereof. The jurisdiction of this Honorable Court rests upon 28 U.S.C.A. Section 1257 (3) and Rule 10 .1. (c) of this Court.

FEDERAL PROVISIONS INVOLVED

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws"; as provided in the Amendment Fourteen (14) of the Constitution of the United States.

STATEMENT OF THE CASE

The Plaintiff filed suit against Defendant, claiming unauthorized use of Plaintiff creator-author's property, denying her right to protection of her property guaranteed by the United States Constitution.

Plaintiff, a minority senior citizen free lance creator-author testified in her deposition that Defendant, a national broadcast conglomerate, requested she submit to it broadcast program formats and sample scripts she created-authored. She was told this was in lieu of employment in an available position for which Plaintiff was well-qualified, and which Defendant was discussing with her at the time. (SR, 17, 25-26; R, 105, 123-124; Br.of Apl.,5; Apl.for Cert.,S.Ct.Ga.,4)

As requested, Plaintiff submitted

material to Defendant for three broadcast programs July 31, 1980. (SR, 27-28; R.105)

On August 22, 1983, Defendant began national airing on WTBS-TV, the "Superstation", of one of the exact programs which Plaintiff had submitted to it at its request. (R, 4, 8, 116; Br.of Apl.,21)

Plaintiff tried unsuccessfully to communicate with Defendant's president, who claims in on-air credits to be the creator of Plaintiff's program. (R, 4, 8, 117, 144, 145, 147, 151, 157-160; Brief of Appellant, 7)

Two years after the debut of said program, plaintiff filed suit in the Superior Court of Fulton County, State of Georgia. (Civil Action No. D-23249)

Plaintiff's copyright attorney not only delayed by four months returning Plaintiff's immediately signed and notorized errata sheet and deposition

signature page he told her to return to him (SR, 8-10; R, 34, 141), but due to a deadline oversight, said attorney advised Plaintiff to withdraw the claim without prejudice and refile, for she needed a trial attorney. (R, 116)

When Plaintiff filed her second claim August 21, 1987, still within the statute of limitations, Defendant answered with a counterclaim. (R, 4, 7-11;Br.Apl.,1)

Plaintiff filed her Motion to Extend Discovery. Later the same day, Defendant filed its Motion for Summary Judgment. (R, 19-92, 39-59; Apl.for Cert.,S.Ct.,Ga., 3)

On March 23, 1988, Defendant filed its Brief in Opposition to Plaintiff's Motion to Extend Discovery, requesting that the Court delay Plaintiff's extension request until after the Court had an opportunity to rule on Defendant's Motion for Summary Judgment. (R, 93-97; Br.Apl., 1)

The Trial Court complied with Defendant's request by granting summary judgment to Defendant September 20, 1988, depriving Plaintiff of discovery, though she had submitted factual evidence (two affidavits from Defendant's Operations Manager), which disclaimed grounds upon which summary judgment was granted. (R, 197) Trial Court's Order not only ignored misquotes of Plaintiff's deposition by Defendant's counsel, but also went so far as to repeat these misquotes and base grant of summary judgment thereon. (Br.of Apl., 8-13)

Plaintiff filed Brief of Appellant May 19, 1989, explaining misquotes and that she had changed references to her deposition contained in her brief to include only material in the record.

(She was told by the records clerk that her deposition transcript remained sealed in the record of her first claim.) The record now shows that the court reporter who transcribed Plaintiff's deposition filed it March 17, 1988.

Defendant's Motion of May 31, 1989, requested Plaintiff's deposition transcript be transferred to the present claim. (SR. 1-5; Apl. for Cert., S.Ct.Ga., 7)

The Superior Court of Fulton County granted Motion To Transfer Deposition Transcript and to Supplement the Record on Appeal June 5, 1989, nine months after Trial Court's Order Granting Summary Judgment to Defendant. (SR, 6, 7) Nevertheless, the Court of Appeals affirmed Trial Court's Order November 20, 1989.

Plaintiff filed Motion for Rehearing with the Court of Appeals, State of

Georgia November 25, 1989. Defendant submitted no reply. Rehearing was denied December 1, 1989.

Plaintiff filed Application for Certiorari in the Supreme Court, State of Georgia, December 20, 1989, again, referring to misquotes of Plaintiff's deposition, misapplication of cases to television programs, as well as those cases ignored by Defendant and the Courts that Plaintiff submitted that do apply to the broadcast programs:

> PLAINTIFF: "The decision rendered by the Court of Appeals in the present case creates issues which are of grave significance to the television business and the public.---If these issues remain unresolved, creators of television programs will have no protection and no recourse when these programs

> are misappropriated. For these reasons, applicant looks to this Court to preserve the rights of creator-authors of television programs---and, as a result, the viewing public's rights--" (Apl.for Cert., S.Ct.Ga., 2)

The Supreme Court also ignored the facts, denying the application with one judge dissenting, February 7, 1990.

Plaintiff filed Motion for Reconsideration to the Supreme Court of Georgia February 17, 1990, and gave Notice of Intention to Apply for Writ of Certiorari to the United States Supreme Court. Defendant submitted no reply, as it had done in the previous instance.

The Supreme Court of Georgia again ignored the facts and affirmed the lower Court's Order February 28, 1990.

Though the above quote is from Plaintiff's Application for Certiorari

to the Supreme Court of Georgia, nevertheless, Plaintiff referred to these federal issues of creator-authors' property rights and television viewing public's rights throughout this case; and how negative programming far outweighs the positives of our society, causing an unbalanced, harmful situation.

She also referred to speeches she made through the years. The following are excerpts from one of these appearances as "public" at the National Parent and Teacher Association Hearing on Television Violence held in Atlanta, Georgia, January 18, 1977:

> "Recently a television network aired a 'special', asserting that our nation is a violent one, and that we want violence in television: therefore, they're just trying to please the viewers by giving them what they want.
>
> True, we are human beings with a lowly, animal nature, but we are also made in the image of God with a higher nature.
>
> The people of the United States claim that we are 'one nation under God,

indivisible, with liberty and justice for all'. When a nation is under the leadership of God, liberty and justice come as a by-product. It is controlled liberty of the higher nature, rather than uncontrolled, as our lower natures dictate.

These natures have been confused of late because, in the past, we were taught right from wrong in our homes, but with the advent of the new member of our family---television---we're bombarded with all kinds of teachings. Unless we become stronger in our higher natures to offset these outer influences, we'll lose our direction, and our nation as a result.----

This group gathered here today demonstrates our present concern with appeals to our lower natures through violence on television.----

The television industry will have to mature to the point of taking on the responsibility of giving our nation what we need rather than what it claims we want (which is actually a cop-out), by appealing to our higher rather than our lower natures.

High standards and good taste can be made interesting---suspenseful, tender, adventuresome, educational and with wholesome sex.----And news isn't all negative, as these executives claim when they state, 'Well, we're just reporting what happens'.

It's good that the silent majority is speaking out through the National Parent Teachers Association to insist that America is still America, indivisible, and we intend to keep it that way."

The federal question concerning the lack of protection for property of creator-authors' broadcast programs and continued harm, as a result, to the public through unbalanced negative programming was first raised in this case in Plaintiff's deposition of March 1, 1986. She stated that she was prompted in 1968, to create/write her program formats and scripts through her concern for the influence television has on people.

Plaintiff's concern for others began as a child for her elderly grandmother, which spread into other areas, causing her to major in education and sociology in college, later taking a graduate journalism, as well as television news, courses.

The following quotes are from Plaintiff's deposition:

PLAINTIFF: "---the way it overlaps into the broadcast field is each of the programs, the ideas that I thought of, I felt were to help our country and other people." (SR, 23-24)

DEFENDANT: "Could you name the programs---and tell me something about them? (SR, 27)

PLAINTIFF: "---One of them was "Good News", which has, as its main goal, to offset widespread violence prevalent in our society today. It concentrates on good news documentaries, bringing to light the numerous volunteer, nonprofit or,---'good deed projects' by groups or individuals, or testimonies of changed lives that do not hit the normal news media. Then I produced a branch-off, or spin-off of "Good News". It was called 'Newsfangle'---- It was a good-news-type thing.----I spoke of them as being positive, and in my speeches, you will see how I have 'fought' for---'positive programming', because I felt there was such a need. It was in 1968 when I created them, and it is still today---. ----- As I have said in some of these speeches, I feel people that I have known in my lifetime want to feel that their time hasn't been wasted when they

have watched television----. At the same time they have been entertained, they have been uplifted or received information or been enlightened on some subject---not 'just entertained' as television execs. say."(SR, 58)

DEFENDANT: "---Now, back to how did you first come up with the idea?"

PLAINTIFF: "---the sociology part of me, the concern, and especially in the latter '60s, there was great unrest and violence, and everything was negative in our country, and I felt that there needed to be some positives; and I knew that there were still good people; I knew there were still good events and deeds---I didn't think it was fair for the media to be concentrating on the negative all the time. I felt there needed to be that balance."

DEFENDANT: "---did you believe that the public would be receptive to this type of programming?"

PLAINTIFF: "Yes, I definitely felt that it would because, first of all, I go by what I feel in my heart, and my heart was crying out for it---I began

to notice others---people complaining that it seems that everything is so negative in the television industry, the news in particular---"

DEFENDANT: "And that the public would be receptive?"

PLAINTIFF: "Definitely! In fact, they were crying for it. ---It's (the sample script) about a man who was on drugs and had just gone to the very bottom and how his life had totally turned around, and he was a different person, and it had 'before' and 'after' pictures.---As I say at the bottom of it, 'the show could also feature unusual good deeds such as a heroic rescue of the life of another, and so forth'. My idea for the program was to have, well, the usual good news that doesn't normally hit the news media---". (emphasis added) (SR, 38-42)

DEFENDANT: "So they will deal with a negative or a story whereas---"

PLAINTIFF: "Mine is the---the outcome is definitely supposed to be good news. Now, it might start out with a negative that turned out to be a positive, but it's ('Good News') supposed to

concentrate, the outcome is supposed to be positive." (emphases added) (SR, 53)

DEFENDANT: "And that it's a program about good news?"

PLAINTIFF: "Yes. Again, some of the features may start out negative, but it just shows how it can be a life, or whatever, turned around totally to where this is what people can do; this is how we can turn our lives around, how we can turn situations, people, whatever, can be turned around to be good news instead of just everything is negative ----" (SR, 60)

Other references (to harm to the public through unbalanced negative programming) are on pages 21 and 22 of this petition.

Plaintiff respectfully petitions this Honorable Court for justice and a Writ of Certiorari.

REASONS RELIED UPON

FOR ALLOWANCE OF THE WRIT

Review by certiorari is appropriate in this case under Rule 10 .1. (c) of the United States Supreme Court in that a state court of last resort has decided (illegally in this case) an important question of federal law which has not been, but should be, settled by this Court.

ARGUMENT

WHETHER OR NOT THE GEORGIA COURT OF LAST RESORT ERRED AS A MATTER OF FEDERAL LAW IN GRANTING SUMMARY JUDGMENT BASED ON COURTS' ILLEGAL MISQUOTES FROM DEPOSITION WHICH COULD NOT HAVE BEEN CONSIDERED BECAUSE DEPOSITION WAS NOT EVEN IN THE RECORD: WHETHER A MINORITY SENIOR CITIZEN SHOULD BE DEPRIVED OF PROTECTION AGAINST UNAUTHORIZED USE OF PLAINTIFF CREATOR-AUTHOR'S PROPERTY BY A NATIONAL BROADCAST CONGLOMERATE, THOUGH FACTUAL EVIDENCE EXISTS, RESULTING IN LACK OF PROTECTION FOR ALL CREATOR-AUTHORS' BROADCAST PROGRAM PROPERTY AND HARM TO THE PUBLIC THROUGH UNBALANCED NEGATIVE PROGRAMMING?

I

In the Superior Court of Fulton County, State of Georgia, Order Granting Summary Judgment September 20, 1988, on the novelty issue of misappropriation of intellectual property, the Trial Court misquoted Plaintiff's deposition:

> TRIAL COURT: "In the case at bar the plaintiff admits that the 'Good News' format has been used in the television industry for many years prior to the development of the plaintiff's program. Deposition of Jacquelyn Jones at 52." (R, 231; S.R., 63)

Plaintiff never made such a statement!

> DEFENDANT: "Would you agree that----the interview form of programs had been used prior to your show?" (SR,63)
>
> PLAINTIFF: "Sure." (SR,63)

Plaintiff's response was positive because interview forms of programs have existed since the beginning of radio, but not "Plaintiff's 'Good News' format", as the Trial Court misquoted above. (R, 126; Br. of Apl., 16-17; Apl. for Cert., S.Ct.,Ga., 2)

The Trial Court continued in Order:

> TRIAL COURT: "Further, in her deposition the plaintiff acknowledged that the use of this 'positive programming' concept was used by other networks prior to her disclosure to the defendant in 1980. Id. at 39-42, 59." (R, 231-232; SR, 50-53, 70; Br. of Apl.,16-17; Apl. Motion for Reh.,Cert., S.Ct. Ga., 4)

The concept of positive programming is not new. (R, 116) There is a

difference in television programming between a concept (general abstract category---positive in this instance) and a program (one, specific, written, entitled format). (R, 120). Plaintiff states that when she created her positive programs in the latter 1960's, very little such programming existed. She believed her creation of, and attempt to sell her programs got the trend toward positive/ reality programming started. She said, however, that the public continued throughout the 1970s and into the 1980s, to plead for positives of our society to be reported in broadcast news as a balance to negative, sensational, deviant behavior of our society which dominates news reports and influences impressionable minds. (SR, 38-39, 50, 60, 83; R, 105,

122-123, 126, 130-132, 144, 168, 200; Br. of Appl., 3-4, 6, 10, 13, 17, 21; Appl's. Reply to Br. of Applee., 2, 9, 10; Appl's. Motion for Reh. Appeals Ct.,2-4, Apln. for Cert., S.Ct.Ga., 2, 5, 9, 10; Appellant's Motion for Reh. S.Ct. Ga., 4-6, 12)

II

> DEFENDANT: "In her brief, Plaintiff admits that the concept of positive programming was not unique (true) and that the format she submitted to Defendant was not novel (absolutely false!)." (emphases added) (R, 218)

This erroneous statement by Defendant in its brief is the basis upon which the Trial Court Granted Summary Judgment to Defendant. Plaintiff's original deposition transcript was sealed in the record of her first claim until nine months later when Defendant filed Motion for Deposition's Transfer to this claim. The Trial Court, therefore, relied upon Defendant's counsel's statements in its Order. (SR, 6-7)

Due to basic lack of understanding of the intricate workings of broadcast programming outside New York or Los Angeles, Defendant also took advantage of the situation by continuing to misquote Plaintiff's deposition, confusing the issues and deceiving the Courts.

Defendant's misquote above (R, 218), referred to page 7 of Plaintiff's Supplemental Brief in Opposition to Defendant's Motion for Summary Judgment: "According to plaintiff, she recognized that positive programming is not unique in and of itself. (Jones dep. pg. 19)". However, there is no statement on said page 7 or Jones deposition page 19 (R, 30) or any other page in Plaintiff's deposition transcript or briefs that states that her "Good News" format she submitted to Defendant July 31, 1980, at its request, was not novel! Defendant proves its

misquote by its own reference.

The Trial Court's Order continued with Defendant's misquotes of Plaintiff's deposition:

> TRIAL COURT: "Plaintiff also acknowledged in her deposition that a number of television stations used her idea prior to the debut of defendant's show--- she sued only the defendant because WTBS was the only station which used the title 'Good News'. Id. at 43-45. The use of the idea by several stations refutes plaintiff's argument that her idea was novel." (R, 232; SR, 54-55; Apl's. Reply to Br. of Apple., 7)

Again, it was Defendant's query, rather than "Plaintiff acknowledged" (to quote the Trial Court):

> DEFENDANT: "So basically, the reason you came to TBS rather than going to some of these other stations or affiliates that had been using similar ideas is because TBS used the title?" (emphases added) (R,55)
>
> PLAINTIFF: "The reason I came to TBS with a suit is because they're the only ones that actually used a title and a format that matched up together". (R, 56)

> DEFENDANT: "Have you ever made a claim against any of these other stations for using your ideas?" (R, 81)
>
> PLAINTIFF: "No. No, because they never used the precise title and the precise format of my program." (emphases added) (R, 81)

Even Defendant acknowledged (in the first quote of defendant's above) that other stations used similar programs to Plaintiff's "Good News" program format which was original, new and novel to the television marketplace prior to Defendant's debut of Plaintiff's program.

Television networks copy trends, concepts/styles, forms and even programs by changing the title and/or format. (SR, 54; Br. of Appl., 11)

The title and format are the program, and never change with each episode of the same television interview/magazine news program. Only the subjects covered, guests and scripts change with each episode of the

same program. (SR, 55-56, 81; R, 120, 185, 208; Br. of Apl., 12)

If a program is copied, the use thereof is unauthorized. Plaintiff cited the following case which applies to television creator-authors' program property, which was ignored by the Courts:

> "Our courts have long recognized that an author or inventor has a property right in the product of his mental labors, even though such product is not patentable. The right has been recognized at common law independently of copyright or letters patent". Monumental Properties of Georgia, Inc. vs. Frontier Disposal, Inc., (R, 208; Br. of Appl., 14, 19, 21)

Other stations could not have used Plaintiff's program if they did not use the same title and the same format as did Defendant.(SR,81)

III

The Trial Court's Order refers to Morton B. Katz & Associates, Ltd. v. Arnold, citing Wilson v. Barton & Ludwig which are

misapplied to television creator-authors' program property:

> TRIAL COURT: "This was not a novel idea because novelty is not proven by merely taking something already known and in use but utilizing it in a new manner. Id. According to the evidence in this case, it appears that the plaintiff, like the plaintiff in Morton, has repackaged an old idea." (R, 232)
>
> PLAINTIFF: "All television programs are similar in some ways to other television programs (R, 120). The fact that an interview form, positive style/concept and news category has been used in the past does not obviate the singular ideas regarding the television news interview/magazine program format entitled 'Good News' which had never aired before Defendant's debut, nationally, of Plaintiff's 'Good News' format on WTBS-TV, the 'Superstation', August 22, 1983."(R, 209; Appellant's Reply to Br. of Appellee, 7)

Plaintiff cited the following case which Defendant and the Courts ignored, and that applies to creator-authors' program property:

> "A trade secret can exist in combination of characteristics and components, each of which by itself is

> in the public domain, but the unified process, design and operation of which is in unique combination affords a competitive advantage and is a a protectable secret." Water Services, Inc. vs. Tesco Chemicals, Inc. (R, 211; Br. of Appl., 16; Apl. for Reh., S.Ct. Ga., 10)

Regarding titles of programs, Defendant also misapplied Fraser v. Singer and Multiple Realty, Inc. v. Multiple Listing Service for television programs. In broadcast programming, titles are "catchy", familiar and short, but the novelty of a program is not based on the title. The novelty of a television program is the combination of a title and a format which are the program. (R, 120-121, 126; Ap.'s. Reply to Br. of Aple., 7; Apl.,Cert.,S.Ct.Ga.,10)

When a program is used without permission from the creator-author, one does have a claim for misappropriation of intellectual property in television

programming. (R, 208; Br. of Appl., 12) The following case was ignored by Defendant and the Courts. It does apply to television creator-authors' program property:

> "The basis of protection for intellectual property is in the mental effort necessary to its production and the right of everyone to the fruits of his own labor. The owner of literary or intellectual property, like the owner of any other kind of property, may do what he will with his own and his right is absolute and exclusive." (emphases added) Jenkins vs. News Syndicated Co. (R, 208, 214; Br. of Apl., 15, 17)

IV

The Court of Appeals of Georgia, in upholding Trial Court's Order on the novelty issue also relied upon Defendant's misquotes of Plaintiff's deposition:

> COURT OF APPEALS: "Plaintiff contends that her idea was not only unique conceptually (false!) but novel as to format (definitely!) and composition." (emphases added)

Plaintiff agrees that her "Good News" format is also unique in composition in that no other interview/magazine television news program features only true documentaries and stories with positive outcomes, rejecting all with negative outcomes.

> COURT OF APPEALS: "The idea of presenting good news on a broadcast as opposed to negative news might have been unique in the 1960s, but by the time it was presented to defendant it was not, having lost originality in the legal sense. By 1970, according to the WALL STREET JOURNAL, the idea was being widely discussed and tried in various broadcast formats.

The WALL STREET JOURNAL article the Appeals Court refers to was submitted to Defendant by Plaintiff during discovery and was included with letters which Plaintiff wrote as follow-ups to office visits with television program/news directors to demonstrate what she had been trying to communicate to broadcasters responsible

for content of newscasts; i.e.: that there are positives about our society, but regular newscasts do not balance these positives with the negative aspects of our society, and the industry does not give our society the opportunity to respond to such positive reports. This article demonstrates our society, given the opportunity, responds positively to an occasional positive report in regular newscasts. Such reporting was not new in 1968, 1970 or 1980. Just rare! (SR, 81; R, 142-143, 197)

However, Plaintiff's television news interview/magazine program format was created for this balance, in a manner which made it as original, novel and new to the marketplace when created in 1968, as it was when presented to Defendant in 1980, at its request. (SR, 42; R, 168). The following case which applies to creator-authors' program property was ignored by Defendant

and the Courts:

> "At common law, an author has a property right in his unpublished manuscript and can obtain redress against anyone who deprives him of it by infringement or against anyone who obtains a copy and endeavors to realize a profit by its publication through plagiarism or otherwise." 17 USCA § 2; Wheaton vs. Peters, (Br. of Appellant, 15)

The Georgia Court of Appeals continued in its Decision by referring to (misapplied) Shanco International V. Digital Controls:

> COURT OF APPEALS: "It is comparable to People's Magazine and Entertainment Tonight. The idea of uniting the concept and format might have been new, but not when it was presented to Turner in 1980."

People Magazine publishes and "Entertainment Tonight" television program airs negative as well as positive features; therefore, this magazine and program are not comparable to Plaintiff's "Good News" program format which rejects all features

with negative outcomes. The concept of Plaintiff's program is positive, which is not a new style/form; but, Plaintiff's program format was as new to the television marketplace when created in the 1960s as it was when presented to Turner in 1980, at its request. (SR, 42; R, 168)

The Court of Appeals of Georgia in its Decision, also gave great emphasis to Murray v. National Broadcasting Co., regarding novelty. Murray was not novel in that other programs had aired which used the same format as Murray's program. NBC also cast the lead for the program who had been suggested by Murray; but casting is not the format which contains the novelty of the program. Furthermore, Murray was employed by NBC, and, as the Court stated on page 238, 671 Federal Supplement, "making such submissions was outside the scope of plaintiff's (Murray)

duties as a Unit Manager (complaint, ¶ 12)" (emphases added). This Plaintiff's own experience has been that, when she created/wrote/produced/hosted a news program, she had no ownership of the program, since she was employed by the station. (SR, 12, 22; R, 123) Murray submitted his material to NBC as an employee; whereas, Plaintiff was asked by Defendant to submit her materials and she was not employed by Defendant. (SR, 26) Nevertheless, there may have been a "unique ingredient" in Murray's format which did make it novel. In that instance, Murray should have prevailed.

V

In this case, Plaintiff not only promoted the positive news concept for numerous years, but she also created written, entitled program formats and sample scripts which contain her ideas for television programs that are

consistent with her opinions regarding positive news. (R, 50, 54-55, 132, 147; SR, 58)

Plaintiff is well respected and has included in speeches and written articles her views regarding positive programs and news in broadcasting. When Defendant began airing Plaintiff's "Good News" program format, those individuals who knew of Plaintiff and her belief in this balance likely believed Plaintiff, who resides in the same city (which she also promoted for twenty years), had joined Turner Broadcasting System, Inc., a definite plus for Defendant. (SR, 23, 38-39, 58; R, 147-149).

Statistics, in fact, prove the programs of WTBS-TV supported all the other endeavors of Turner Broadcasting System, Inc., including Cable News Network I and CNN II until 1985, though Defendant's counsel was not aware

of these statistics. (R, 155-156)

Plaintiff submitted to the record an affidavit (factual evidence) signed by Defendant's Operations Manager June 10, 1988, which was ignored by Defendant and the Courts:

> JOSEPH A EVERETT: "That the idea behind the scripts, however, was different in that the television industry had consistently held the opinion that upbeat or positive news did not attract viewers and was not good business. That based upon my experience in the television industry (since the mid 1950s), and my review of other programming scripts and formats, the plaintiff's scripts and formats did represent unique ideas for the television industry and for WTBS-TV (emphases added)". (R, 197)

> "Plaintiff, as the party resisting the Motion for Summary Judgment, was to be given the benefit of all inferences to be drawn from the evidence." Ford Motor Credit Co. vs. Moulder. (This case was also ignored by Defendant and the Courts.) (Br. of Appellant, 19)

> "In determining whether a moving party has met its burden of persuation, the court is obligated to take account of the entire setting of the case and must

> consider all papers of record as well as any materials prepared for the Motion". 10A Wright, Miller & Kane § 2721, p. 44. (emphases added). (Apl. for Cert, S.Ct.Ga, 5)

Defendant and the courts did not consider all papers of the record, ignoring this case.

> "As explained by the Court of Appeals for the Third Circuit in In re Japanese Electronics Products Antitrust Litigation, sub. nom. Matsushita Electric Industrial Co. v. Zenith Radio Corp., "if---- there is any evidence in the record from any source from which a reasonable inference in the (non-moving party's) favor may be drawn, the moving party simply cannot obtain a summary judgment". (App. for Cert., S.Ct. Ga., 6) (emphases added)

Plaintiff submitted to the record factual evidence, including affidavits (R, 105, 195-198) which were ignored by Defendant and the Courts. Trial Court's Order left Plaintiff with no discovery.(R, 96)

> "In Celotex Corp. v. Catrett, the Supreme Court stated, "Any potential problem with such premature motions can be adequately dealt with under Rule 56(f), which allows a summary judgment motion to be denied, or

> the hearing on the motion to be continued, if the non-moving party has not had an opportunity to make full discovery---the moving party must affirmatively demonstrate that there is no evidence in the record to support a judgment for the non-moving party. If the moving party has not fully discharged this initial burden of production, its motion for summary judgment must be denied---". (emphasis added) (App. for Cert., S.Ct.Ga., 6)

Defendant and the Courts did not consider that Plaintiff had not had discovery, and Defendant did not demonstrate that there is no evidence in the record to support a judgment for the non-moving party.

The State Courts' actions in this case constitute improper ruling for the Courts to misquote Plaintiff's deposition which was not included in this record until nine months after grant of summary judgment to Defendant (SR, 6-7); during that time lapse, Defendant, on February 11, 1988, requested reassignment back to the judge of Plaintiff's first claim, which was accomplished. Nor

was it proper to deprive Plaintiff of discovery, or for the Courts to ignore factual evidence and cases submitted by Plaintiff, while misapplying cases unfavorable to Plaintiff's cause.

The actions by the State Courts in this case were obviously subterfuge to evade consideration of the federal issue of lack of protection for the property of all creator-authors' television programs and lack of due process of law, resulting in continued harm to the public through unbalanced negative television programming. (R, 208, 211-214; Br. of Appl., 14-19; Appl's. Reply to Br. of Applee, 11; Appl. for Cert., S.Ct. Ga., 5-6; Appl's. Motion for Reh, S.Ct.Ga., 10)

> "The Federal Supreme Court cannot consider the correctness of the nonfederal ground upon which a state court decision was rested unless it is an obvious subterfuge to evade consideration of a federal issue." (emphases

added) Radio Station WOW v. Johnson.

"Whether state court, in basing decision on nonfederal grounds, has thereby sought to evade constitutional issue, is a question on which litigant is entitled to invoke the judgment of the Supreme Court, though existence of the right for which constitutional protection is claimed depends on state law." (emphases added) Fox River Paper Co. v. Railroad Commission of Wisconsin.

"On petition for certiorari to review a decree of a state court as denying or not duly recognizing a federal right set up therein, it is the Supreme Court's province to inquire, not only whether such right was denied in direct terms, but also whether it was denied in substance and effect by interposing a nonfederal ground of decision without fair support." (emphases added) Ancient Egyptian Arabic Order of Nobles of The Mystic Shrine v. Michaux.

"Jurisdiction of United States Supreme Court to review by certiorari the denial of certiorari by state supreme court is not defeated, on theory that state court's decision rests on an independent nonfederal ground, if such nonfederal ground is without any fair or substantial support." (emphases added)

National Association for Advancement of Colored People v. State of Alabama.

CONCLUSION

Plaintiff respectfully petitions this Honorable Court for justice and a Writ of Certiorari, in order to redress the wrongs that have been created by the grant of summary judgment in this case. There is ample support in the record that Plaintiff's material has been misquoted, that Plaintiff's evidence has been ignored, and further that Plaintiff has been deprived of right of discovery.

Jacquelyn F. Jones
Petitioner, pro se

A P P E N D I X

SUPREME COURT OF THE STATE OF GEORGIA

CLERK'S OFFICE

ATLANTA

Date: February 07, 1990

Case No. S90C0407

JACQUELYN F. JONES V. TURNER BROADCASTING SYSTEM, INC.

COURT OF APPEALS CASE NO. A89A1520

The Supreme Court today denied the petition for certiorari in this case.

All the Justices concur.
except Smith, P.J., who dissents.

Very truly yours,

JOLINE B. WILLIAMS, CLERK

SUPREME COURT OF GEORGIA
ATLANTA FEBRUARY 28, 1990

The Honorable Supreme Court met pursuant to adjournment. The following order was passed:

Case No. S90C0407

JACQUELYN F. JONES V. TURNER BROADCASTING SYSTEM, INC.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA
Clerk's Office, Atlanta

I certify that the above is a true extract from the minutes of the Supreme Court of Georgia.

Witness my signature and the seal of said court affixed the day and year last above written.

Jonine B. Williams, Clerk.

IN THE COURT OF APPEALS OF GEORGIA

A89A1520. JONES v. TURNER BROADCASTING SYSTEM, INC. (Bea-169)

Beasley, Judge.

Jones appeals the grant of Turner Broadcasting's motion for summary judgment. Jones had brought a complaint alleging that Turner Broadcasting had misappropriated her idea for a television show entitled "Good News". Turner's answer denied the material allegations of the complaint and set forth several defenses, among which was that Plaintiff's purported concept and format for a television show lacked novelty, an element prescribed in Wilson v. Barton & Ludwig, 163 Ga. App. 721, 723 (1) (296 SE2d 74) (1982). The trial court agreed, granting summary judgment on that theory.

During the late 1960s Jones had developed a sample script for a television, radio or newspaper program which emphasized the positive aspects of the news and our society. For several years thereafter Jones submitted her ideas to various stations and news sources in an attempt to attract interest for the development of the concept. In 1976 when she served as guest commentator on a television station, Jones advised her viewers of the idea of positive programming and requested feedback from the public. Nothing concrete resulted from this experiment but Jones continued to contact stations in an effort to find employment and sell her ideas. In 1980 she met with the operations manager of Turner who reviewed three of her programs, "Good News", "Newsfangle", and "Family Spotlight".

These scripts were forwarded to the Program Director/Station Manager of WTBS-TV, Sid Pike, for consideration. No official action was taken and the scripts were not returned. Then on August 22, 1983, Turner aired the magazine format show entitled "Good News". Jones asserts that this was a wrongful appropriation of her program format.

The forward to Jones' script noted that it was for use by radio, television or newspaper; that it embodied a documentary about, or interview of, persons who had performed good deeds or were involved in acts of a positive nature, and included history of the event or persons who had performed good deeds or were involved in acts of a positive nature, and included history of the event or person and possible future

emphasis. The two-page script by Jones consisted of an interview of an individual who had his life seriously impaired by drug abuse but changed because of a religious conversion. Jones' material had neither been copyrighted nor patented.

"The elements essential to a recovery for the wrongful appropriation or conversion of an unpatented or unpatentable idea or product are: 1) the idea must be novel; 2) the disclosure of the idea must be made in confidence; 3) the idea must be adopted and made use of by the defendant; and 4) the idea must be sufficiently concrete in its development to be usable." Morton B. Katz & Assoc. v. Arnold, 175 Ga. App. 278, 280 (2) (333 SE2d 115) (1985). Plaintiff contends that her idea was not only unique conceptually but novel as to format and composition.

To be novel the concept must be peculiar and not generally available or known to others in the trade. Wilson, supra. To be protected, an idea must possess genuine novelty and invention, which it cannot have if it merely is an adaptation of existing knowledge, albeit a clever, useful, or sensible adaptation. Wilson, supra at 725 citing Textile Rubber & c. Co. v. Shook, Ga. 587, 591 (255 SE2d 705) (1979).

The idea of presenting good news on a broadcast as opposed to negative news might have been unique in the 1960s but by the time it was presented to defendant it was not, having lost originality in the legal sense. By 1970, according to the Wall Street Journal, the idea was being widely discussed and tried in various broadcasting formats. The script proposed by Jones was that of any of the

present feature news, documentary or current event programs utilizing clips, an interview, etc. It is comparable to People's Magazine and Entertainment Tonight. The idea of uniting the concept and format might have been new, but not when it was presented to Turner in 1980. Any freshness arose solely from the fact that something already known and in use was utilized in an extended context. This does not constitute "novelty", because creating a "new and better way of doing something" is not sufficient. Shanco International v. Digital Controls, 169 Ga. App. 184, 187 (3) (312 SE2d 150) (1983). Without the element of novelty plaintiff was deprived of an essential element entitling her to recover. Morton B. Katz & Assoc., supra; Wilson, supra. See Murray v. National Broadcasting Co., 671 FSupp. 236, 239-244 (S.D.N.Y. 1987).

We do not consider whether Turner might have been liable to Jones for her having disclosed or conveyed her ideas to it, see Nimmer on Copyright, S 16.05, p. 16-30, because that theory of recovery was not an issue below. Nevertheless, the question of novelty may even in that instance be controlling, see especially Murray, supra, and cases above cited.

Judgment affirmed. Carley, C. J., and McMurray, P. J., concur.

COURT OF APPEALS
OF THE STATE OF GEORGIA

ATLANTA,
December 1, 1989

The Honorable Court of Appeals met pursuant to adjournment.

The following order was passed:

A89A1520. JACQUELYN F. JONES v. TURNER SYSTEM, INC.

Upon consideration of the motion for a rehearing filed in this case, it is ordered that it be hereby denied.

COURT OF APPEALS OF THE STATE OF GEORGIA
CLERK'S OFFICE, ATLANTA,
December 1, 1989
I certify that the above is a true extract from the minutes of the Court of Appeals of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written.
Victoria McLaughlin
CLERK

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

JACQUELYN F. JONES, Plaintiff	:	
VS.	:	CIVIL ACTION
TURNER BROADCASTING SYSTEM, INC., Defendant	:	FILE NO. D-47469

ORDER GRANTING SUMMARY JUDGMENT TO DEFENDANT

Plaintiff is suing defendant for the alleged misappropriation of her idea for a television show entitled "Good News". Plaintiff had previously developed a sample script and program format in the 1960's for a television/radio show which emphasized the positive aspects of our society. After creating this concept, Ms. Jones submitted her ideas to various stations to see if they would be interested in developing her ideas.

Subsequently, Ms. Jones served as a guest commentator on Channel 36 for the

week of October 4, 1976. At that time, she advised the viewers of her idea for positive television programming and requested on-the-air feedback for her ideas. Ms. Jones later met with Joseph A. Everett, the operations manager of Turner Broadcasting System, Inc. He reviewed Ms. Turner's (Jones) scripts for three programs: "Good News", "Newsfangle" and "Family Spotlight". Everett then forwarded these scripts to Sid Pike for his review. On August 22, 1983, Turner Broadcasting System, Inc. aired the magazine format show "Good News". Plaintiff contends that the defendant's program, "Good News", is a misappropriation of her idea for a program format. As a result of this program, the plaintiff is suing the defendant for damages arising from this alleged misappropriation. Defendant

has filed a motion for summary judgment which is hereby granted.

The defendant argued that it is entitled to summary judgment for several reasons. These reasons are as follows:

1. plaintiff's claims are barred by the applicable statute of limitations;

2. plaintiff's claims do not meet the necessary requirements to support a cause of action for misappropriation;

3. the term "Good News" is generic and descriptive and cannot be entitled to exclusive appropriation by the plaintiff;

4. no contract existed between plaintiff and defendant which would entitle plaintiff to recover for use of her title, scripts and formats;

5. plaintiff released to defendant her idea for the "Good News" format; and,

6. plaintiff's claims are barred by the doctrines of waiver and estoppel.

Defendant's motion is granted on its

defense that the plaintiff's claim does not meet the test of misappropriation. Plaintiff is seeking recovery under the theory that defendant misappropriated her ideas for programming materials for "Good News". Under Georgia law, the essential elements for recovery under the theory of wrongful appropriation or conversion of an idea are:

1. the idea must be novel;
2. the disclosure of the idea must have been made in confidence;
3. the idea must have been made use of and adopted by the defendant; and,
4. the idea must have been sufficiently concrete in its development to be usable.

Morton B. Katz & Associates,

Ltd. v. Arnold, 175 Ga. App. 278, 280, citing Wilson v. Barton & Ludwig, 163 Ga. App. 721 (1982).

Novelty is defined as something which is not generally known in the trade. Id. Thus, to be novel something must be peculiar and not generally available. Id. The Morton court elaborated as follows:

> To be protected, an idea must possess genuine novelty and invention, which it cannot have if it merely is an adaption of existing knowledge, albeit, a clever, useful, or sensible adaption. (citations omitted in original). The novelty essential to a protected property right (cannot) arise solely from the fact that something already known and in use is put to a new use. Id. at 281.

In the Wilson court's opinion: "...the factual determination of novelty depends upon the existence or absence of evidence that the idea has already been in use and

is within the public's knowledge." Wilson at 725. In the case at bar, the plaintiff admits that the "Good News" format had been used in the television industry for many years prior to the development of the plaintiff's program. Deposition of Jacquelyn Jones at 52. Further, in her deposition the plaintiff acknowledged that the use of this "positive programming" concept was used by other networks prior to her disclosure to the defendant in 1980. Id. at 39-42,59.

Plaintiff also acknowledged in her deposition that a number of television stations used her idea prior to the debut of defendant's show---she sued only the defendant because WTBS was the only station which used the title "Good News". Id. at 43-45. The use of the idea by several stations refutes plaintiff's argument that her idea was novel.

The defendant cites several cases in which Georgia courts have refused to sustain claims for the misappropriation of ideas. In Morton, the plaintiff had an idea of developing a telephone sales script geared toward a performing arts organization. Morton, supra. However, the court held that this was not a novel idea because novelty is not proven by merely taking something already known and in use but utilizing it in a new manner. Id. According to the evidence in this case, it appears that the plaintiff, like the plaintiff in Morton, has repackaged an old idea. Such repackaging does not meet her burden of proof for showing novelty in order to sustain a cause of action for misappropriation. The defendant in Morton was granted summary judgment. Like the

plaintiff in Morton, Ms. Jones has not met her burden and cannot meet her burden of proving the novelty of her idea; therefore, the defendant is entitled to summary judgment as a matter of law.

Since plaintiff cannot prevail on the ground of misappropriation, the motion for summary judgment is granted without addressing the other defenses raised by the defendant.

SO ORDERED, this 20th day of September, 1988.

JUDGE DON A LANGHAM
SUPERIOR COURT OF FULTON COUNTY

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